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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/350,474 07/09/99 WINSTROM

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HM22/1124

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EXAMINER

LEVY, N

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

11/24/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

300474

Applicant(s)

WINDSTROM et al

Examiner

Meifley

Group Art Unit

1676

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 9/15/00
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-10, 57-98 is/are pending in the application.
- Of the above claim(s) 1-10, 57-78, 86, 88-98 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 77-85 and 87 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Receipt is acknowledged of Request for reconsideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10, 57-76, 86, 88-98 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4. Applicant has identified a specific feed species: The elected claim 84 species is dependent on claim 77, specifying as additional antibiotic, tetracycline complex..

Claims 77-85 and 87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 77-82, 87 are rejected under 35 U.S.C. 102(e) as being anticipated by Kemp et al- 5908634.

Granular feed (col 3, lines 3-12) of Low Moisture sources include Dunder, for example-, and antibiotics (col 4, line 5-13) chlortetracycline and Ruensin. Minerals; The instant potency stabilizer, are also present (col 3, liner 7, 10-14, 19-22) as are Fermentation by products (line 23-24). Edible oils are present in cottonseed meals-Fish meals etc, as are to copherols, vitamins A, E (col 4, lines 2-7, col. 6 line 8-10). Granulation, and forming homogeneous mix is done (col 5, line 33-35), there one would obtain substantially uniform particle size, and provide dust suppression

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(col 7, (d)). No patentable weight is given to the method of preparation of the feed supplement, the claim composition, absent any criticability shown by applicant.

Claims 77-85,87 are rejected under 35 U.S.C. 102(b) as being anticipated by Klotmen 4447421.

The rejection of record is maintained.

Substantially dustless granular feed premixes are prepared (Col 2 lines 18-33) by blending (col 2, lines 60 Col 3, lines 50, Monensin and oxy tetracycline, equivalent, as fermentation solids or pure drugs with edibles mineral (col 3, line 6-11, Examples 2,5) oil is added (Table II; as is limestone (Table IV). The antibodies fermentation solids meets the instant claim 77 fermented solid with added antibiotic (Col 3, lines 33-43).

Applicant's arguments filed 9/5/2000 have been fully considered but they are not persuasive. Applicants arguments have been considered, reconsideration of the elected species has been the focus of this action, thus 112 issues of non-elected claims are not addressed, those that are should be clear-the applicants explanation of the invention is directed to the process, but the claims are to composition, and examiner finds is criticality associated with the process.

Applications challenges to show increase antibiotic activity is not understood; if one even to increase either the amount of any given antibiotic, or to add a second antibiotic, one would expect an increase in antibiotic activity-This is not a finding of great moment, it is one of Logical deduction, that if you add more, you get more. Applicant should show the addition of an added antibiotic, as of Klothen, results in reducing activity, the rejection will then be with drawn.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday from 7 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1292.

Levy/sg

11/20/00



**NEIL S. LEVY**  
**PRIMARY EXAMINER**